

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

KEVIN DARNELL RAGLAND,

Plaintiff,

v.

Case No. 08-15253

M. RABY, et al

HONORABLE AVERN COHN

Defendants.

**ORDER ADOPTING REPORT AND RECOMMENDATION AND
DENYING DEFENDANT MICHAEL RABY'S MOTION FOR JUDGMENT ON THE
PLEADINGS AS MOOT**

I.

This is a prisoner civil rights case under 42 U.S.C. § 1983. Plaintiff claims that defendants, police officers, violated his constitutional rights. The matter was referred to a magistrate judge for all pretrial proceedings. Defendant M. Raby (Raby) filed a motion for judgment on the pleadings, arguing in part that plaintiff cannot make out a deliberate indifference claim because "he played no role in the custody of Plaintiff, but instead only assisted in the arrest of Plaintiff at the scene of the incident."

After the motion was filed, plaintiff filed what became an Amended Complaint. The Amended Complaint does not assert a deliberate indifference claim against Raby. Rather, the Amended Complaint asserts only a fourth amendment excessive force claim, which Raby conceded plaintiff had sufficiently alleged.

As such, the magistrate judge issued a report and recommendation (MJRR) recommending that Raby's motion be denied as moot in light of the Amended Complaint. The magistrate judge, however, informed plaintiff that if he intends that the Amended

Complaint be read to include a deliberate indifference claim against Raby, plaintiff should object to the MJRR.

Before the Court are plaintiff's objections to the MJRR in which he says that he does want to assert a deliberate indifference claim against Raby.

II.

The Court has reviewed the Amended Complaint and agrees with the magistrate judge that even under a broad interpretation, plaintiff has not asserted a deliberate indifference claim against Raby. Although plaintiff says he wishes to assert such a claim against Raby, his objections fail to flesh out such a claim. Plaintiff states only that he wishes to pursue a deliberate indifference claim against Raby and that it is based on violating his due process rights.

Under these circumstances, plaintiff must file a motion for leave to amend, setting forth in detail the allegations supporting a deliberate indifference claim. The magistrate judge can then consider whether amendment would be proper, particularly in light of Raby's argument that such a claim fails because Raby was not involved in any actions which would support a deliberate indifference claim.

Accordingly, the MJRR is ADOPTED as the findings and conclusions of the Court, as supplemented above. Raby's motion for judgment on the pleadings is DENIED AS MOOT.

SO ORDERED.

Dated: September 29, 2009

s/ Avern Cohn
AVERN COHN
UNITED STATES DISTRICT JUDGE

**08-15253 Ragland v. Raby, et al
Order Adopting R&R**

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was mailed to Kevin Ragland, 191565, St. Louis Correctional Facility, 8585 N. Croswell Road, St. Louis, MI 48880 and the attorneys of record on this date, September 29, 2009, by electronic and/or ordinary mail.

s/ Julie Owens
Case Manager, (313) 234-5160